



STATE OF NEW HAMPSHIRE
 DEPARTMENT OF CORRECTIONS
 DIVISION OF ADMINISTRATION

P.O. BOX 1806
 CONCORD, NH 03302-1806
 603-271-5610 FAX: 603-271-5639
 TDD Access: 1-800-735-2964

William L. Wrenn
 Commissioner

Doreen Wittenberg
 Director

44 *[Signature]*

September 2, 2015

Her Excellency, Governor Margaret Wood Hassan
 and the Honorable Executive Council
 State House
 Concord, New Hampshire 03301

REQUESTED ACTION

Accept on behalf of the State of New Hampshire, pursuant to RSA 4:29, the New Hampshire Department of Corrections respectfully requests authorization to purchase a 7,261 square feet +/- residential building and land appurtenant to the building located at 280 North State Street from the City of Concord, NH for the sum of one dollar (\$1.00). *100% General Funds*

EXPLANATION

The City of Concord, NH (City) has offered the NH Department of Corrections (Department) the 7,261 square feet +/- residential building and land appurtenant to the building, located at 280 North State Street, Concord, NH (Property) to the Department for the sum of \$1.00. As part of the transaction, the Deed conveying the Property to the State shall include a deed restriction to the benefit of the City requiring the Department to demolish all structures located on the Property not later than one hundred eighty (180) days after taking title to the Property. The Department intends to use their own forces to meet this requirement.

The Department wishes to acquire the Property which abuts the NH State Prison Warehouse located at 3 McGuire Street, Concord, NH to expand the Warehouse parking lot and provide for future storage opportunities.

This Purchase and Sale Agreement has been approved by the Attorney General as to form and substance.

Respectfully Submitted,

[Signature of William L. Wrenn]
 William L. Wrenn
 Commissioner

PURCHASE AND SALES AGREEMENT

This **PURCHASE AND SALES AGREEMENT** ("Agreement") is made as of the _____ day of _____, 2015 by and between the City of Concord, a New Hampshire municipal corporation, with a principal place of business at 41 Green Street, Concord, New Hampshire 03301 (referred to the "Seller" or "the City") and the State of New Hampshire Department of Corrections, with a principal place of business at 105 Pleasant Street, PO Box 1806, Concord, New Hampshire 03302-1806 (referred to as "the Buyer"), and referred to collectively as the "Parties".

RECITALS

This Agreement relates to the sale of real estate located at 280 North State Street Concord, New Hampshire (the "Premises"), City Assessing Department Parcel 69-2-2.

This Agreement is entered into upon the basis of the following facts and intentions of the Parties:

- I. The Seller owns certain real estate located at #280 North State Street, Concord, New Hampshire consisting of a 7,261SF +/- residential building set on 0.2 +/- acres of land, as described on the attached plan prepared by the City of Concord Engineering Division, attached as hereto Exhibit 1, and within Book 3388 Page 370 as recorded at the MCRD, and attached hereto as Exhibit 2;
- II. The Buyer, subject to the contingencies set forth within this Agreement, desires to acquire the Premises for the purpose of combining it with other adjacent properties owned by the State of New Hampshire Department of Corrections (herein referred to as the "Buyer's Project").
- III. All Parties signatory to this Agreement are willing to proceed upon the terms and conditions of this Agreement.

NOW, THEREFORE, the Parties hereby agree as follows:

1. DESCRIPTION OF PREMISES AND REAL ESTATE TRANSACTION:

- 1.1. **General:** Pending the results of the Buyer's due diligence and the other conditions in this Agreement, the Seller intends to sell to the Buyer, and the Buyer intends to acquire from the Seller, the Premises, consisting of a lot of record approximately 0.2 acres in size, as shown on the attached plan hereby included as "Exhibit 1", meaning and intending to describe property set forth in a deed recorded at the Merrimack County Registry of Deeds Book 3388 Page 370, as attached to this Agreement as "Exhibit 2".
- 1.2. **Purchase Price:** The purchase price for the premises shall be ONE DOLLAR (\$1.00).

- 1.3. **Deposit**: No deposit is required for this transaction.
- 1.4. **Payment of Purchase Price**: The Purchase Price shall be paid in full by the Buyer to the Seller at Closing and conveyance of the Premises to the Buyer.
- 1.5. **Access to Premises**: The Seller hereby grants authorization to the Buyer, its employees, representatives, consultants, and agents to enter the Premises for the purpose of completing due diligence and for all other purposes necessary to carry out the terms of this Agreement.

The Buyer and the Seller shall coordinate all access to the Premises by third parties working on behalf of the Buyer as part of the Buyer's due diligence.

The Buyer shall require any and all contractors who are retained for the purpose of completing due diligence or for any other purpose necessary to carry out the terms of this Agreement, and who will need to access the Premises, to obtain a certificate of insurance in the amount of \$2 million aggregate, \$1 million per occurrence naming the Seller as an additional insured.

- 1.6. **Closing**: Closing shall occur no later than December 31, 2015. The Parties agree that all Closing documents, including Quitclaim Deed for conveyance of the Premises, easement deeds (if applicable) and other Closing documents, shall not be recorded at the Merrimack County Registry of Deeds and that cash shall not be exchanged between the Parties until all of the Buyer's and Seller's Contingencies, as set forth in Articles 2 and 3, respectively, have been achieved or satisfied.
- 1.7. **Title and Deed Restrictions**: In addition to the terms and conditions set forth within this Agreement, the conveyance of the Premises by the Seller to the Buyer shall be by Quitclaim Deed.
 - a) Existing matters of record accepted and approved by the Buyer.
- 1.8. **Seller's Affidavits and Certificates**: If requested to do so by the Buyer, the Seller, at the Closing, shall deliver such affidavits (in customary form) as may be required by the Buyer or Buyer's title insurance company with respect to: (1) parties in possession of the Premises, (2) rights of third parties and title claims in or to the Premises, and (3) mechanic's and materialmen's liens affecting the Premises.
- 1.9. **Deed Preparation; Recording Fees**: The Seller shall convey the Premises by Quitclaim Deed. The Seller shall prepare all deeds at its

expense. The Seller shall deliver the draft deed to the Buyer as soon after the execution of this Agreement as possible. The Buyer shall review the deeds within ten (10) business days of receipt from the Seller and provide comments to the Seller. The Seller shall address the comments and respond in a timely manner and revise the Quitclaim Deed no later than ten (10) business days prior to the Closing.

- 1.10. **Transfer Taxes and Recording Fees**: The Parties shall pay their respective shares of normal and customary recording fees and transfer taxes customarily associated with real estate transactions. The parties acknowledge that the Seller and Buyer are both exempt from the Real Estate Transfer Tax pursuant to RSA 78-B:2, I.
- 1.11. **Discharge of Liens**: The Seller may, at its expense, pay or discharge all liens, mechanics liens, encumbrances, and attachments, if any, which may exist on the Premises through the date of Closing or filed after recording of the deed transferring the Premises to the Buyer due to an action by the Seller prior to recording of the transfer deed, except those which the parties agree will not be discharged in accordance with Section 1.7 above. To enable the Seller to make conveyance as herein provided, the Seller may, at the time of delivery of the deed, use the Purchase Price or any portion thereof to clear the title or any or all encumbrances or interests, provided that all instruments so procured are recorded simultaneously with the delivery of said deed. The Seller shall also be entitled to use the proceeds to pay off any mortgagee, pursuant to standard customary practices for real estate transactions and conveyances, and receive therefrom a discharge(s) to be recorded in the ordinary course of business.

In the event that the Seller is unable or otherwise chooses not to pay or discharge all liens, mechanics liens, encumbrance and attachments which exist before the date of Closing, the Buyer, at its sole option, may proceed with any of the following options:

- 1.11.1. Afford the Seller any additional amount of time which the Buyer solely deems reasonable to cure said Liens; or,
- 1.11.2. Terminate this Agreement, in which case the Buyer shall be entitled to the return of the Deposit (if any), following which this Agreement shall be null and void, and of no further force or effect; or,
- 1.11.3. The Parties may renegotiate the Purchase Price to appropriately account for said Liens and then proceed to Closing.

- 1.12. **Title:** Upon execution of this Agreement by the Parties, the Buyer shall perform a title examination of the Premises, and must be reasonably satisfied that title to the Premises is good, marketable and insurable. In the event that the title to the Premises is not good, marketable and insurable, the Seller shall be provided a reasonable period of time, no less than thirty (30) days, within which to resolve such title defects. In the event that the Seller is unable or otherwise unwilling to provide good, marketable and insurance title within thirty (30) day period, the Buyer, at its sole option, may proceed with any of the following options:
- 1.12.1. Afford the Seller any additional amount of time which the Buyer solely deems reasonable to cure said Title defects; or,
- 1.12.2. Terminate this Agreement, in which case the Buyer shall be entitled to the return of the Deposit (if any), following which this Agreement shall be null and void, and of no further force or effect; or,
- 1.12.3. The Parties may renegotiate the Purchase Price to appropriately account for the condition of the Premises' Title and then proceed to Closing.
- 1.13. **Prorating of Property Taxes and Utility Costs:** At the time of recording of the Deed, the Seller shall be required to pay all property taxes and utilities (as applicable) for the Premises through the date of Closing.
- 1.14. **Delivery of Premises, Removal of Tenants, Property to be Retained by Seller:** The Seller shall deliver possession of the Premises to the Buyer in its "AS IS, WHERE IS" condition.
- 1.15. **Title Insurance:** If applicable, the Seller shall execute all customary documents required by the Buyer's Title Insurance Company.
- 1.16. **Real Estate Broker's Fees & Commissions:** The Parties hereby confirm that neither is represented by a real estate broker for this transaction. To the extent party may come to be represented by a real estate broker, said party shall be solely responsible for paying its broker any fees or commissions owed resulting from this transaction.
- 1.17. **Environmental Contamination, Due Diligence, and Indemnification:**
- 1.17.1. **Environmental Reports Commissioned by the Seller:** The Seller shall provide the Buyer with copies of environmental studies, assessments, or reports which it has in its possession, if any.

The Buyer acknowledges and agrees that it may not rely upon the representations, certifications, and statements contained therein without the express written consent of the parties who authored such reports or generated said data. Further, the Buyer acknowledges that the provision of such materials by the Seller does not constitute any representation or warranty by the Seller related to environmental conditions or potential presence of hazardous materials at the Premises.

- 1.17.2. **Due Diligence:** The Buyer shall have the right to conduct such studies and investigations it deems necessary with respect to the environmental condition of the Premises and any environmental contamination or hazardous material related thereto.

The Seller shall provide the Buyer (or its agents, employees, consultants, contractors, and representatives) reasonable access to the Premises for the purpose of carrying out any environmental investigations or other due diligence required by the Buyer. In order to complete such examinations or investigations, the Buyer may undertake soil borings, test pits, or installation of groundwater monitoring wells. The Buyer shall perform these tasks at its own risk and at its own expense. The Buyer accepts full responsibility for the use of the Premises during its inspections and due diligence, and acknowledges that such access is subject to the indemnity provisions of Section 1.5.

- 1.17.3. **Results of Environmental Due Diligence:** If based upon examination of data and reports provided by the Seller or upon the results of the Buyer's own environmental tests, examinations, investigations, or studies, the Buyer determines that the Premises are not acceptable because of the presence of environmental contamination, hazardous materials, or other buried materials at the Premises, the Buyer shall have the following options, as follows:

- 1.17.3.1. Terminate this Agreement in which case the Seller shall return the Buyer's deposit in full, following which this Agreement shall be null and void, and of no further force or effect; or,

1.17.3.2. Accept the Premises in its "as is condition" and proceed to Closing, subject to other contingencies as set forth within this Agreement.

1.17.4. **Completion of Transaction and Environmental Conditions:** If the Buyer proceeds to Closing either relying upon environmental due diligence, tests, studies, or investigations completed by the Buyer or previously by the Seller, or in the event the Buyer chooses to forgo such due diligence, tests, studies, or investigations, the Buyer shall accept full responsibility for the Premises in its "as is, where is" environmental condition with respect to the potential presence of hazardous waste or other buried materials regardless whether such waste or other materials were identified by said due diligence, tests, studies, or investigations.

1.18. **Seller's Disclosures:** The Seller makes no warranties or representations regarding environmental contamination or sub-surface conditions at the Premises.

1.19. **Casualty and Condemnation:** In the event that the Premises, prior to Closing, are damaged by fire, flood, collapse, or other casualty, or is subject to an eminent domain proceeding, the Buyer at any time after the occurrence of such damage or casualty may elect to terminate this Agreement by written notice, in which event all other obligations of the Parties hereunder shall cease, any Deposits shall be returned to the Buyer, and this Agreement shall thereupon be void and of no further force or effect.

In the event of partial eminent domain (leaving suitable residual Premises area for the Buyer's Project), the Buyer may choose to proceed with the acquisition and redesign of its intended use of the Premises to accommodate the portion of Premises taken and the Parties shall negotiate an extension of timing requirements for Closing. Further, the Parties shall agree to reduce the Purchase Price in an amount directly proportionate to the total lot area seized by said taking. The City warrants and represents to the Buyer that the City has no plans to take all or any portion of the Premises by eminent domain and is unaware of plans by any other entity to do so.

2. **BUYER'S CONTIGENCIES:** The Buyer's obligation to Close on acquisition of the Premises shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Buyer any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Buyer shall have no further obligation to the Buyer.

2.1. None.

3. **SELLER'S CONTINGENCIES:** The Seller's obligation to Close on acquisition of the Premises shall be subject to the following contingencies, the failure to satisfy any one of which shall give the Seller any of the options set forth below and, in addition, the right to withdraw from this Agreement, after which the Seller shall have no further obligation to the Buyer.

3.1. **Buyer's Guarantee to Demolished Existing Structures:** As part of this transaction, the Deed conveying the Premises to the State shall include a deed restriction to the benefit of the City requiring that the State demolish all structures located at the Premises not later than 180 days after taking title to the Premises, unless otherwise extended by the Parties in writing. In the event the State fails to demolish structures at the property within the allotted time, the City shall have the option to enter the property, demolish all structures at the Premises, and charge the State the cost of demolition plus an additional fee equal to 10% of the cost of demolition, which shall be paid in full by the State to the City no later than thirty (30) calendar days after the date of City's written notice. If the State fails to make payment in full by said date, a penalty fee shall be assessed beginning immediately after the payment is due at the rate of 1.5% per month (18% per annum) at the beginning of each month thereafter. Should the State fail to make payment to the City within 1 year from the date of the City's written notice, the City shall have the ability to pursue legal action against the State to recover payment and related costs associated there with. Once the building is demolished and any payments due to the City are received (if applicable), the City shall file a release of said deed restriction which shall be recorded at the Merrimack County Registry of Deeds.

3.2. **Merger of Premises with Buyer's Adjacent Property Located at #3 McGuire Street:** Simultaneously with Closing, the Buyer shall file necessary applications and provide required fees with the City of Concord to merge the Premises with abutting property located at 3 McGuire Street owned by the Buyer. The goal of said application shall be to make 280 North State Street part of 3 McGuire Street.

4. **REPRESENTATIONS AND WARRANTIES**

4.1. **Representations and Warranties of the Seller.** The Seller hereby represents and warrants to the best of its knowledge and belief that:

- 4.1.1. The execution and delivery of this Agreement and the performance of the Seller's obligations hereunder have been duly authorized by such municipal action as necessary, and this Agreement constitutes the legal, valid and binding agreement of the City, enforceable against the City in accordance with its terms subject only to the conditions set out in this Agreement.
- 4.1.2. Subject to the conditions set out in this Agreement, neither the execution or delivery by the City of this Agreement, the performance by the City of its obligations in connection with the transactions contemplated hereby, nor the fulfillment by the City of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the City, or conflicts with, violates or results in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the City is a party or by which the City or any of its properties or assets are bound, or constitutes a default there under.
- 4.1.3. Except as set forth in this Agreement, no approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the City, except such as have been duly obtained or made or disclosed in this Agreement.
- 4.1.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the City, wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the City of its obligations hereunder or the performance by the City of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement, or any other agreement or instrument entered into by the City in connection with the transactions contemplated hereby.

4.2. **Representations and Warranties of the Buyer.** The Buyer hereby represents and warrants to the best of its knowledge and belief that:

- 4.2.1. The Buyer has the power and authority to execute, deliver and carry out the terms and provisions of this Agreement and all necessary action has been taken to authorize the execution, delivery and performance by it of this Agreement. This Agreement will, upon execution and delivery thereof

by the Buyer, constitute valid, legal and binding obligations of the Buyer enforceable against the Buyer in accordance with the respective terms thereof.

- 4.2.2. Neither the execution or delivery by the Buyer of this Agreement, the performance by the Buyer of their obligations in connection with the transactions contemplated hereby, nor the fulfillment by the Buyer of the terms or conditions hereof conflicts with, violates or results in a breach of any constitution, law or governmental regulation applicable to the Buyer, or conflicts with, violates or result in a breach of any term or condition of any judgment or decree, or any agreement or instrument, to which the Buyer are a party or by which the Buyer or any of its properties or assets are bound, or constitutes a default there under.
- 4.2.3. No approval, authorization, order or consent of, or declaration, registration or filing with, any Governmental Authority is required for the valid execution and delivery of this Agreement by the Buyer, except such as have been duly obtained or made.
- 4.2.4. There is no action, suit or proceeding, at law or in equity, or official investigation before or by any court or Governmental Authority, pending or threatened against the Buyer, its principal(s), affiliate(s), or entities controlled by its principal(s), wherein an unfavorable decision, ruling or finding would materially adversely affect the performance by the Buyer of their obligations hereunder or the performance by the Buyer of its obligations under the transactions contemplated hereby, or which, in any way, questions or may adversely materially affect the validity or enforceability of this Agreement or any other agreement or instrument entered into by the Buyer in connection with the transactions contemplated hereby.

5. GENERAL PROVISIONS

- 5.1. **Cooperation**: The Buyer and the Seller agree to cooperate with each other in order to achieve the purposes of this Agreement and, in connection therewith, to take such further actions and to execute such further documents as may reasonably be requested by the Seller, the Buyer, or their representatives, agents, and consultants.
- 5.2. **Entire Agreement; Amendments**. This Agreement embodies the entire agreement and understanding between the Parties hereto relating to the subject matter herein and supersedes all prior agreements and understandings between the Parties. This Agreement may not be changed, modified, waived, discharged or terminated orally, but only by an instrument in writing signed by each of the Parties hereto or by the Party against which enforcement is sought. Any change, modification or

amendment, which requires the consent or approval of a Governmental Authority, shall be effective only upon receipt of such approval.

- 5.3. **Binding Effect; Successors and Assignors.** The terms and provisions of this Agreement and the respective rights and obligations of the Parties hereunder shall be binding upon, and inure to the benefit of, their respective heirs, successors, assigns, and nominees.
- 5.4. **Headings.** The headings to the sections and subsections of this Agreement have been inserted for convenience of reference only and shall not modify, define, limit or expand the express provisions of this Agreement.
- 5.5. **Exhibits.** All exhibits referred to in this Agreement are hereby incorporated by reference and expressly made a part hereof.
- 5.6. **Governing Law.** This Agreement shall in all respects be governed by, and construed and enforced in accordance with, the laws of the State of New Hampshire.
- 5.7. **Enforceability.** Any provision of this Agreement that is determined to be illegal or unenforceable by a court of competent jurisdiction, shall be ineffective to the extent of such prohibition or unenforceability without invalidating the remaining provisions hereof; and the Parties agree to negotiate in good faith to amend the Agreement to provide for each party to the Agreement the same relative rights and obligations existing prior to such determination of illegality or unenforceability.
- 5.8. **Consent to Jurisdiction and Venue.** The Buyer and Seller submit to the jurisdiction of the courts of the State of New Hampshire and the courts from which an appeal from such trial venue may be taken or other relief may be sought for purposes of any action or proceeding arising out of this Agreement or any related agreement. All legal actions taken by the Parties shall be commenced in Merrimack County New Hampshire Superior Court. Both Parties hereby waive their right to a jury trial.
- 5.9. **Independent Parties.** The Buyer and Seller are independent parties under this Agreement, and nothing in this Agreement shall be deemed or construed for any purpose to establish between any of them or among them a relationship of principal and agent, employment, partnership, joint venture, or any other relationship other than independent parties.
- 5.10. **Survival of Agreement.** The agreements, covenants, indemnities, representations and warranties contained herein shall survive the execution and delivery of this Agreement.

- 5.11. **Waivers.** Failure on the part of any Party to complain of any action or non-action on the part of the other Party, no matter how long the same may continue, shall not be deemed to be a waiver of any such Party's rights hereunder. No waiver at any time of any provision hereof by any Party shall be construed as a waiver of any other provision hereof or a waiver at any subsequent time of the same provision.
- 5.12. **No Rights Conferred Upon Others.** Except as expressly set out herein, nothing in this Agreement shall be construed as giving any individual, corporation, limited liability company, partnership, joint venture, association, joint stock company, trust, unincorporated organization or government, other than the Parties hereto, their successors and permitted assigns, any right, remedy or claim under or in respect of this Agreement or any provision hereof.
- 5.13. **Preservation of Rights.** Nothing herein or in any Related Agreement shall limit or be construed to limit in any way rights or remedies the City may have for the collection of real property taxes under law, unless expressly set forth herein.
- 5.14. **Time of the Essence.** The Parties agree that time is of the essence in performance of their respective obligations under this Agreement.
- 5.15. **Good Faith and Fair Dealing.** Unless expressly stated otherwise in this Agreement, whenever a party's consent or approval is required under this Agreement, or whenever a party shall have the right to give an instruction or request another party to act or to refrain from acting under this Agreement, or whenever a party must act or perform before another party may act or perform under this Agreement, such consent, approval, or instruction, request, act or performance shall be reasonably made or done, or shall not be unreasonably withheld, delayed, or conditioned, as the case may be.
- 5.16. **Municipal Approvals.** The execution of this Agreement does not preempt or supersede the review process or powers of any City or other governmental Board, Committee, Commission, or Department, or excuse the parties from the requirement to apply for and receive all necessary permits and approvals from all applicable City or other governmental Boards, Committees, Commissions, or Departments.
- 5.17. **Warranties and Representations:** The Buyer and Seller each acknowledge that they have not been influenced to enter into this transaction or relied upon any warranties or representations not specifically set forth or incorporated into this Agreement.

- 5.18. **Saving Clause:** In the event that any of the terms or provisions of this Agreement are declared invalid or unenforceable by any Court of competent jurisdiction or any Federal or State Government Agency having jurisdiction over the subject matter of this Agreement, the remaining terms and provisions that are not effected thereby shall remain in full force and effect.

[The remainder of this page left blank intentionally]

LIST OF EXHIBITS

- Exhibit 1 Plan of Premises, untitled, dated September 27, 2013
- Exhibit 2 Book 3380 Page 370, as recorded at the Merrimack County Registry of Deeds.
- Exhibit 3 City of Concord Assessing Card for Premises

[The remainder of this page left blank intentionally]

Executed as a sealed instrument this _____ day of _____, 2015.

SELLER

CITY OF CONCORD

By: _____ Date: _____
Thomas J. Aspell, Jr., City Manager
Duly Authorized

**STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK**

In _____, on the _____ day of _____, 2015, before me, personally appeared **THOMAS J. ASPELL, JR.**, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

Justice of the Peace/Notary Public

BUYER

STATE OF NEW HAMPSHIRE DEPARTMENT OF CORRECTIONS

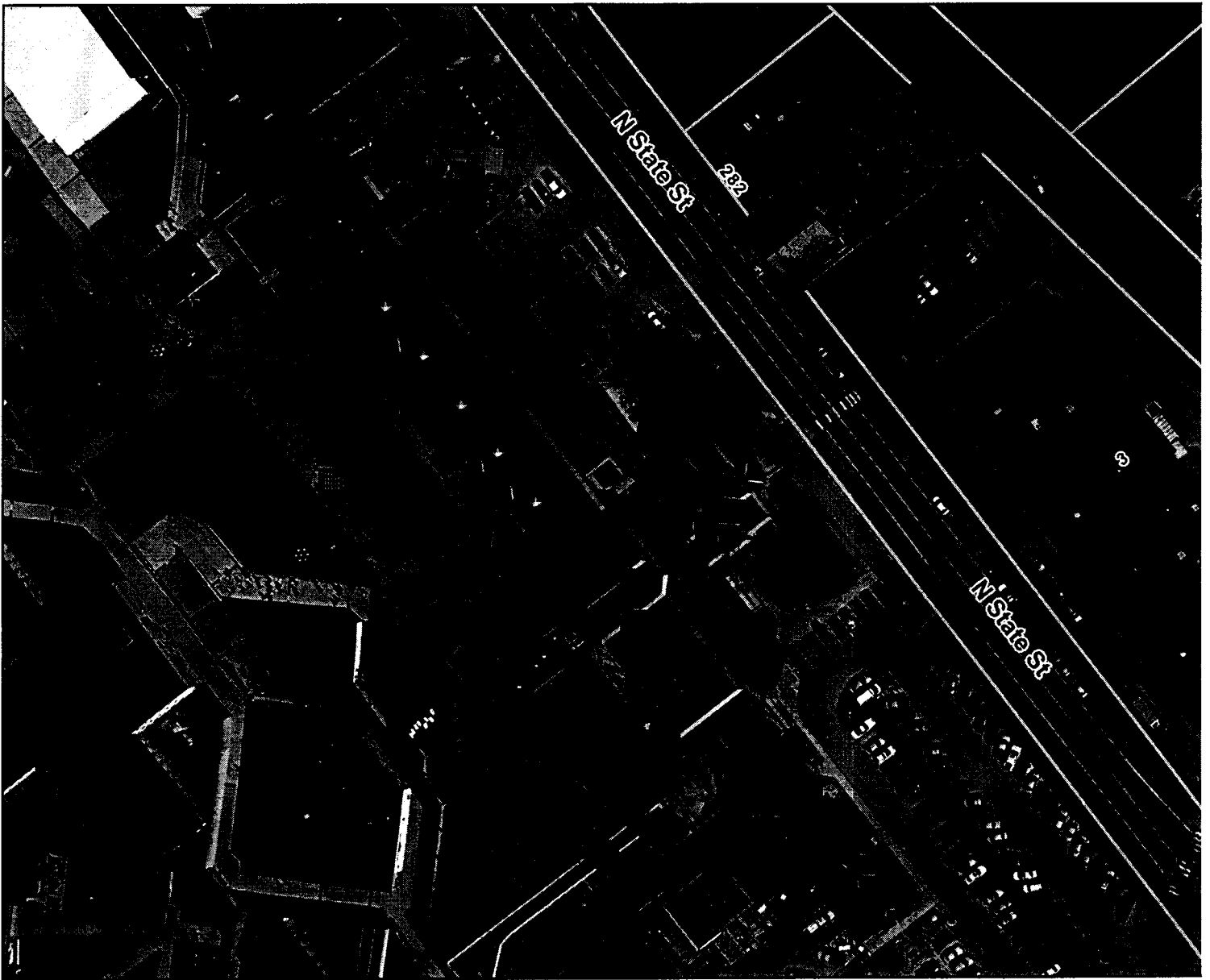
By: _____ Date: _____

Duly Authorized

**STATE OF NEW HAMPSHIRE
COUNTY OF MERRIMACK**

In _____, on the _____ day of _____, 2015, before me, personally appeared _____, known to me or proved to be the person named in and who executed the foregoing instrument, and being first duly sworn, such person acknowledged that he executed said instrument for the purposes therein contained as his free and voluntary act and deed.

Justice of the Peace/Notary Public



September 27, 2013

